IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1765 OF 2004

Shri Vinod K. Shah ...Applicant

Versus

Kiranraj M. Jain ...Respondent

Shri Pramod J. Pawar for the Applicant.
Shri Rohit Pawaskar for the Respondent No.1.
Mrs M.M. Deshmukh, A.P.P for the Respondent No.2.

CORAM : A. S. OKA, J.

DATE : NOVEMBER 23, 2006.

P.C.:

1. Heard the Advocate for the Applicant and the Advocate appearing for the Respondent. The Applicant is the complainant in a complaint under section 138 of the Negotiable Instruments Act, 1881. By the impugned Judgment and Order, the first Respondent has been acquitted of the offence under section 138 of the said Act.

2. The case of the Applicant is that he is a share-broker and the first Respondent(accused) approached him for purchasing shares of various companies. The first Respondent was regularly purchasing shares from the Applicant. There was an

account of the first Respondent maintained by the Applicant. As per the instructions of the first Respondent, the Applicant used to purchase shares of various companies. After receiving the share certificates, the first Respondent used to pay price of the shares to the Applicant. According to the case of the Applicant, in the year 1994 he purchased shares of various companies for the first Respondent by spending from his own funds. There were two cheques in the sum of Rs.34,700/- and Rs.30,000/- issued by the first Respondent on 24th February, 1995 and 21st February, 1995 towards the price of the shares. The said cheques were dishonoured. On the basis of dishonour of the said cheques, the present complaint has been filed.

3. After having heard the Advocates appearing for the parties, I find that no case is made out for grant of leave to prefer Appeal as the learned Trial Judge was justified in acquitting the first Respondent of the offence punishable under section 138 of the Negotiable Instruments Act, 1881.

4. I have perused the notes of evidence of the Applicant and his cross-examination. In the

cross-examination, the Applicant admitted that he used to take receipt from the party after handing over shares to the particular party. He stated that he has also maintained delivery challans and bill books. He stated that he was ready and willing to produce the receipt given by the first Respondent to him as well as delivery challans and bill books. It appears that the Applicant did not produce the said documents. The case of the first Respondent appears to be that the shares were never delivered. Thus, the learned Judge acquitted the first Respondent on the ground that presumption under section 139 of the said Act of 1881 has been rebutted.

5. I find that the view taken by the learned Judge is a possible view which could have been taken on the basis of material on record. No case is made out for grant of leave. Application is rejected.

6. It is however, made clear that the observations made in this order are confined to prayer made by the Applicant for grant of leave under section 378(4) of the Code of Criminal Procedure, 1973. A Civil suit, if pending will be decided on its own merits.

JUDGE